

95-172

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 17 1991

Federal Communications Commission
Office of the Secretary

In re Application of
Press Television Corporation
For Modification of
Construction Permit
WKCF(TV), Clermont, Florida

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)
)

File No. BMPCT-900413KI

DOCKET FILE COPY ORIGINAL

RECEIVED

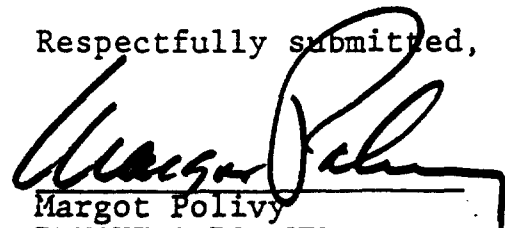
To: Roy Stewart, Chief
Mass Media Bureau

JAN 2 1991

PETITION FOR EXTENSION OF TIME

Rainbow Broadcasting Company (Rainbow) hereby requests a one week extension of time to file its Reply to the Opposition to Petition for Reconsideration and Stay, filed by Press Television Corporation (Press) on January 9, 1991. Rainbow's Reply is presently due on Tuesday, January 22, 1991; Rainbow seeks leave to file on Tuesday, January 29, 1991. Counsel for Press has consented to grant of this petition, which is necessitated by counsel's involvement in an out of town trial in the United States District Court for the Southern District of Florida.

Respectfully submitted,



Margot Polivy
RENOUF & POLIVY
1532 Sixteenth Street, N.W.
Washington, D.C. 20036
(202) 265-1807

Counsel for Rainbow
Broadcasting Company

17 January 1991

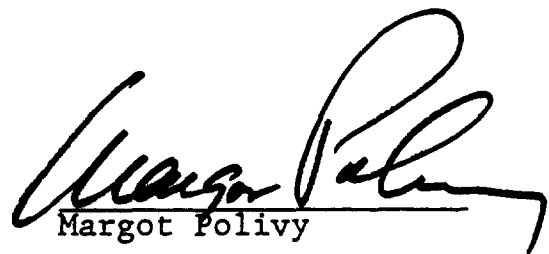
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Extension of Time were sent first class mail, postage prepaid, this seventeenth day of January 1991, to the following:

Roy J. Stewart, Esquire
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

Clay Pendarvis, Esquire
Chief, Television Branch
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

Harry F. Cole, Esquire
Bechtel & Cole, Chartered
2101 L Street, N.W., Suite 502
Washington, D.C. 20037



Margot Polivy

APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION
PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT

(CAREFULLY READ INSTRUCTIONS ON BACK BEFORE COMPLETING)

For Commission Use Only

File No. BPCT-900702 KK

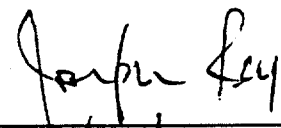
1. Legal Name of Applicant (See Instruction C) RAINBOW BROADCASTING COMPANY		3. PURPOSE OF APPLICATION: <input checked="" type="checkbox"/> a. Additional time to construct broadcast station <input type="checkbox"/> b. Construction permit to replace expired permit	
2. Mailing Address (Number, street, city, state, ZIP code) 151 Crandon Boulevard Apartment 110 Key Biscayne, Florida 33149		4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT: File Number BPCT820309KF Call Letters WRBW Frequency UHF Channel No. 65 Station Location Orlando, Florida	
Telephone No. (Include Area Code) (305) 361-8223		RECEIVED MAY 30 1990 Federal Communications Commission Office of the Secretary	
5. OTHER: Submit as Exhibit No. _____ a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc. N/A			
6. INT OF CONSTRUCTION: (a) Has equipment been delivered? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If NO, answer the following: From Whom Ordered (If no order has been placed, so indicate) No order has been placed.		(b) Has installation commenced? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, submit as Exhibit No. _____ a description of the extent of installation and the date installation commenced.	
Date Ordered	Date Delivery Promised	(c) Estimated date by which construction can be completed. 24 months after completion of court review	
7. (a) If application is for extension of construction permit, submit as Exhibit No. <u>1</u> reason(s) why construction has not been completed. (b) If application is to replace an expired construction permit, submit as Exhibit No. _____ the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).			
8. The representations contained in the application for construction permit still true and correct? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If NO, give particulars in Exhibit No. _____			

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Legal Name of Applicant Rainbow Broadcasting Company	Signature 
Title Partner	Date 5/29/90

RAINBOW BROADCASTING COMPANY EXHIBIT 1

The application of Rainbow Broadcasting Company for construction permit for Channel 65, Orlando, Florida was granted by Commission Order, FCC 85-558, released October 18, 1985. By that Order the Commission denied applications for review of a Review Board decision (FCC 84R-85, released December 3, 1984) granting Rainbow's application. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After submission of briefs but before oral argument, the Commission requested that the Court return the proceeding to the agency. Upon remand (by order of November 5, 1986), the Commission determined that "this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 85-484." (Commission Report to the Court, dated February 29, 1988).

Technically, Rainbow did not have a construction permit from November 1986 until June 9, 1988, when the proceeding was ordered returned to the Court of Appeals. The case was decided by the Court on April 21, 1989 and the grant to Rainbow again affirmed. However, on September 20, 1989, Metro Broadcasting, Inc., one of the competing applicants, filed a petition for a writ of certiorari with the United States Supreme Court. The Supreme Court granted certiorari

and the case was briefed (Case No. 89-453) and argued on March 28, 1990. Decision is pending.

The foregoing chronology demonstrates that Rainbow has never been in a position to undertake construction on Channel 65, Orlando, absent the threat of judicial reversal of the license award. Moreover, from November 8, 1986 to June 9, 1988, the period during which the proceeding was returned to the Commission and placed in abeyance, Rainbow's construction permit could not be considered to have been "final", i.e., a construction permit upon the basis of which Rainbow would have been permitted to construct and operate on Channel 65, Orlando.

In view of the continuing appellate challenge to the grant of Rainbow's application, Rainbow requests that it be granted the normal period for construction, 24 months after completion of judicial review. Since the Commission is a party to the pending Supreme Court proceeding, the date of completion of judicial review will be immediately known to the Commission.

RENOUF & POLIVY 2-79
1532 - 16TH STREET, N.W.
WASHINGTON, D.C. 20036

8484

30 May 1990

15-76
540

TO THE
ORDER OF Federal Communications Commission

\$ 200.00

Two hundred and no/100s-----DOLLARS

 THE NATIONAL BANK
OF WASHINGTON

DUPONT CIRCLE OFFICE WASHINGTON, D.C. 20036

FOR Rainbow Broadcasting Form 307

Natricia George
B

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UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

MODIFICATION OF CONSTRUCTION PERMIT

COMMERCIAL TV

(Class of station)

Ref. En.
File No. BMPCT-1117KE

Call Sign WRBW

Modification No.

RAINBOW BROADCASTING COMPANY
151 CRANDON BOULEVARD
APARTMENT 110
KEY BISCAYNE, FL 33149

Permittee RAINBOW BROADCASTING COMPANY

Station location: ORLANDO, FL

Associated Broadcast station: N/A

The Authority Contained in Authorization File No. BPCT-880711KE
dated OCTOBER 11, 1985 granted to the Permittee listed above is hereby modified in part as follows:

AUTHORITY TO EXTEND COMPLETION DATE TO: MAY 30, 1990

This modification of construction permit shall be attached to and be made a part of the construction permit of this station.

Except as herein expressly modified, the above-mentioned construction permit, subject to all modifications heretofore granted by the Commission, is to continue in full force and effect in accordance with the terms and conditions thereof and for the period therein specified.

Dated: NOVEMBER 30, 1989

rll ISSUED 12-5-89

FEDERAL
COMMUNICATIONS
COMMISSION



FCC Form 361
October 1978

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

File No. BPCT-890510KG

Call Sign WRBW

Modification No.

MODIFICATION OF CONSTRUCTION PERMIT

COMMERCIAL TV

(Class of station)

Rainbow Broadcasting Company
3DI Corp.
7110 N.W. Fiftieth Street
Miami, Florida 33166

Permittee Rainbow Broadcasting Company

Station location: Orlando, Florida

Associated Broadcast station: N/A

The Authority Contained in Authorization File No. BPCT-880711KE
dated October 11, 1985 granted to the Permittee listed above is hereby modified in part as follows:

AUTHORITY TO EXTEND COMPLETION DATE TO: November 22, 1989

This modification of construction permit shall be attached to and be made a part of the construction permit of this station.

Except as herein expressly modified, the above-mentioned construction permit, subject to all modifications heretofore granted by the Commission, is to continue in full force and effect in accordance with the terms and conditions thereof and for the period therein specified.

Dated: May 22, 1989

r11

Issued 5-23-89

FEDERAL
COMMUNICATIONS
COMMISSION



F. C. C. - WASHINGTON, D. C.

FCC Form 361
October 1978

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

MODIFICATION OF CONSTRUCTION PERMIT

COMMERCIAL TELEVISION

(Class of station)

File No. BPCT-880711KE

Call Sign WRBW(TV)

Modification No.

Rainbow Broadcasting Company
c/o JDI Corp.
7110 N.W. Fifteenth Street
Miami, Florida 33166

Permittee : Rainbow Broadcasting Company

Station location: Orlando, Florida

Associated Broadcast station: N/A

The Authority Contained in Authorization File No. (BPCT-820909KF)
dated 10-11-85 granted to the Permittee listed above is hereby modified in part as follows:

AUTHORITY TO EXTEND COMPLETION DATE: January 28, 1989.

This modification of construction permit shall be attached to and be made a part of the construction permit of this station.

Except as herein expressly modified, the above-mentioned construction permit, subject to all modifications heretofore granted by the Commission, is to continue in full force and effect in accordance with the terms and conditions thereof and for the period therein specified.

Dated: July 28, 1988

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FEDERAL
COMMUNICATIONS
COMMISSION



F. C. C. - WASHINGTON, D. C.

FCC Form 361
October 1978

APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION
PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT
(CAREFULLY READ INSTRUCTIONS ON BACK BEFORE COMPLETING)

For Commission Use Only

File No.

BMPCT-19117 KE

1. Legal Name of Applicant (See Instructions) RAINBOW BROADCASTING COMPANY		3. PURPOSE OF APPLICATION: <input checked="" type="checkbox"/> a. Additional time to construct broadcast station <input type="checkbox"/> b. Construction permit to replace expired permit	
2. Mailing Address (Number, street, city, state, ZIP code) 151 Crandon Boulevard Apartment 110 Key Biscayne, Florida 33149		4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT: BPC1820809KF Call Letters: WRBW Frequency: UHF Channel No. 65 Station Location: Orlando, Florida	
Telephone No. (Include Area Code) (305) 361-8223			
5. OTHER: Submit as Exhibit No. _____ a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc. <u>N/A</u>			
6. EXTENT OF CONSTRUCTION: (a) Has equipment been delivered? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If NO, answer the following: From Whom Ordered (If no order has been placed, so indicate) <u>No order has been placed</u>		(b) Has installation commenced? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, submit as Exhibit No. _____ a description of the extent of installation and the date installation commenced.	
Date Ordered	Date Delivery Promised	(c) Estimated date by which construction can be completed. <u>24 months after completion of judicial review</u>	

7. (a) If application is for extension of construction permit, submit as Exhibit No. 1 reason(s) why construction has not been completed.

(b) If application is to replace an expired construction permit, submit as Exhibit No. _____ the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

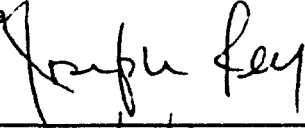
Are the representations contained in the application for construction permit still true and correct? ☒ YES ☐ NO
If NO, give particulars in Exhibit No. _____

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Legal Name of Applicant Rainbow Broadcasting Company	Signature 
Title Partner	Date 11/7/89

RAINBOW BROADCASTING COMPANY EXHIBIT 1

The application of Rainbow Broadcasting Company for construction permit for Channel 65, Orlando, Florida was granted by Commission Order, FCC 85-558, released October 18, 1985. By that Order the Commission denied applications for review of a Review Board decision (FCC 84R-85, released December 3, 1984) granting Rainbow's application. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After submission of the written briefs but before oral argument, the Commission requested that the Court return the proceeding to the F.C.C. Upon remand (by order of November 5, 1986), the Commission determined that "this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 85-484" (Commission Report to the Court, dated February 29, 1988).

Technically, Rainbow did not have a construction permit from November 1986 until June 9, 1988, when the proceeding was ordered returned by the Court of Appeals. The case was decided by the Court on April 21, 1989 and the grant to Rainbow again affirmed. However, on September 20, 1989, Metro Broadcasting, Inc., one of the competing applicants, filed a petition for a writ of certiorari with the United States Supreme Court. Oppositions to that petition

are due November 20, 1989. It is thus unknown at this time when the Supreme Court will rule on the petition and whether it will grant certiorari. .

The foregoing chronology demonstrates that Rainbow has never been in a position to undertake construction on Channel 65, Orlando, absent the threat of judicial reversal of the license award. Moreover, from November 5, 1986 through June 9, 1988, the period during which the proceeding was returned to the Commission and placed in abeyance, Rainbow's construction permit could not be considered to have been "final", i.e., a construction permit upon the basis of which Rainbow would have been permitted to construct and operate on Channel 65, Orlando.

In view of the continuing appellate challenge to the grant of Rainbow's application, Rainbow requests that it be granted the normal period for construction, 24 months after completion of judicial review. Since the Commission is a party to the pending Supreme Court proceeding, Metro Broadcasting, Inc. v. F.C.C., Case No. 89-453, the date of completion of judicial review will be immediately known to the Commission.

United States of America
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR EXTENSION OF CONSTRUCTION PERMIT
OR TO REPLACE EXPIRED CONSTRUCTION PERMIT

INSTRUCTIONS

- A. This form is to be used in all cases when applying for additional time to construct a station or when applying for construction permit to replace expired permit. See the following Parts of the Commission's Rules:

BROADCAST - Part 73
COMMON CARRIER - Parts 21, 23 and 25

- B. Prepare and file original and one copy. File with the Federal Communications Commission, Washington, D.C. 20554 (Sign all copies)

- C. The name of the applicant must be stated exactly as it appears on the construction permit/expired construction permit.

- D. This application shall be personally signed by the applicant. If any applicant is an individual, by one of the partners; if the applicant is a partnership, by an officer; if the applicant is a corporation, by a member who is an officer. If the applicant is an unincorporated association, by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction; if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of her/his absence from the United States. The attorney shall, in the event he/she signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than knowledge), he/she shall separately set forth reasons for believing that such statements are true.

- E. [Broadcast applicants only - Item 6 (c)]
Completion of construction includes the time required for testing and filing FCC Form 302 for broadcast station license.

- F. [Broadcast applicants only - Item 7]
Applicants must explain fully, status of construction, reasons for delays in commencement/completion of construction and detailed steps being taken to remedy delays.

- G. Filing date is determined by date application is received in FCC.

- H. **BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.**

FOR COMMISSION USE ONLY

FILE NO.

1. Legal name of applicant (See instruction C)

Rainbow Broadcasting Company

2. Address (Number, street, city, state, ZIP code)

c/o 3DI Corp.
7110 N.W. Fiftieth Street
Miami, Florida 33166

RECEIVED

JUL 11 1988

Telephone No. (Include Area Code)

(305) 591-9416

Federal Communications Commission

3. PURPOSE OF APPLICATION: (Check one)

a. Additional time to construct radio station ☐

b. Construction permit to replace expired permit ☒
(Not to be used under Part 21)

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT.

File Number

BPCT-820809KF

Call Letter

WRBW(TV)

Frequency

UHF

Channel No. (Broadcast applicants only) 65

Station Location

Orlando, Florida

5. Other (Broadcast applicants only)

Submit as Exhibit No. ____ a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc. N/A

6. EXTENT OF CONSTRUCTION

(a) Has equipment been delivered?

☐ Yes ☒ No

IF NO, answer the following:

From whom ordered (If no order has been placed, so indicate)

See attached Exhibit 1

Date Ordered

Date Delivery Promised

(b) Has installation commenced?

☐ Yes ☒ No

IF YES, submit as Exhibit ____ a description of the extent of installation and the date installation commenced.

(c) Estimated date by which construction can be completed.

See attached Exhibit 1

7. (a) If application is for extension of construction permit, submit as Exhibit ____ reason(s) why construction has not been completed.

(b) If application is to replace an expired construction permit, submit as Exhibit ____ the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

8. Are the representations contained in the application for construction permit still true and correct?

☒ YES ☐ NO

If No, give particulars in Exhibit

THE APPLICANT hereby waives any claim to the use of any particular frequency or of electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application (See Section 304 of the Communications Act of 1934).

THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

THE APPLICANT acknowledges that all statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this 5th day of July, 1988.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM
ARE PUNISHABLE BY FINE AND IMPRISONMENT, U.S.
CODE, TITLE 18, SECTION 1001.

Rainbow Broadcasting Company

(Legal Name of Applicant)

Joseph Rey

(Signature)

Title Partner

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended.

The principal purpose(s) for which the information will be used is to determine if the benefit requested is consistent with public interest.

The staff, consisting variously of attorneys, analysts, engineers, and application examiners, will use the information to determine whether the application should be granted, dismissed, or designated for hearing.

If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain this authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P. L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a (e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P. L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

EXHIBITS furnished as required by this form:

Exhibit No.	Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which).	Official Title
1	Joseph Rey	Partner

RAINBOW BROADCASTING COMPANY EXHIBIT 1

Rainbow Broadcasting Company's application for construction permit for Channel 65, Orlando, Florida was granted by Commission Order, FCC 85-558, released October 18, 1985. By that Order the F.C.C. denied applications for review of a Review Board decision (FCC 84R-85, released December 3, 1984) granting Rainbow's application. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After submission of the written briefs but before oral argument, the Commission requested that the Court return the proceeding to the F.C.C. Upon remand (by order of November 5, 1986), the Commission determined that "this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 86-484" (F.C.C.'s Report to the Court, dated February 29, 1988, appended hereto as Attachment A).

It was not until June 9, 1988 that the proceeding was ordered returned by the Court of Appeals (Order appended hereto as Attachment B). The case is presently scheduled for oral argument in the Court of Appeals on November 21, 1988.

In view of the foregoing chronology, Rainbow has not yet been in a position to undertake construction on Channel 65, Orlando absent the threat of judicial reversal of the license award. Moreover, from November 5, 1986 through June 9, 1988,

the period during which the proceeding was returned to the F.C.C. and placed in abeyance by the Commission, Rainbow's construction permit could not be considered to have been "final"-- i.e., a construction permit upon which Rainbow would have been permitted to construct and operate on Channel 65, Orlando.

In view of the fact that Rainbow's construction permit was never "final" in any practical sense and from November 1986 to June 1988 was also not final in a legal sense, Rainbow did not believe a request for extension was necessary. For this reason, Rainbow did not file a Form 701 with the F.C.C. and is now doing so only to comply with the letter from Clay C. Pendarvis, Chief, Television Branch, dated June 21, 1988.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WINTER PARK COMMUNICATIONS, INC.,)	
Appellant,)	
)	
v.)	No. 85-1755
)	(and consolidated case)
FEDERAL COMMUNICATIONS COMMISSION,)	
Appellee,)	
)	
RAINBOW BROADCASTING COMPANY, <u>et al.</u> ,)	
Intervenors.)	

STATUS REPORT

This status report is filed pursuant to the Court's Order of November 5, 1986. That Order remanded the records in these cases to the Commission, as set forth in motions for remand filed by the Commission and appellant Metro Broadcasting, Inc., and directed the parties to file status reports at forty-five day intervals. As stated in its previous status reports, the Federal Communications Commission determined on remand that this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 86-484.¹

On January 14, 1987, the Commission, in compliance with Public Law No. 100-202,² closed MM Docket 86-484, thereby terminating the reexamination of its comparative licensing policies based on racial, ethnic or gender preferences. In further compliance with Pub. L. No.

¹ Reexamination of the Commission's Comparative Licensing Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications, MM Docket No. 86-484, 1 FCC Rcd 1315 (1986).

² Making Further Continuing Appropriations for Fiscal Year 1988 and for Other Purposes, Pub. L. No. 100-202 (signed Dec. 22, 1987).

100-202, the Commission ordered that its comparative licensing policies based on racial, ethnic or gender preferences that were in effect prior to September 12, 1986 be reinstated and that the presiding Administrative Law Judges, the Review Board and the Office of the General Counsel process all comparative licensing cases in a manner consistent with Commission policy in effect prior to September 12, 1986. Order, FCC 88-17, adopted January 14, 1988.³

The instant proceeding is one of three proceedings now pending at the Commission on remand from the Court in conjunction with the now terminated MM Docket No. 86-484. The Chairman of the Commission has instructed the General Counsel to prepare items for the Commission's consideration in these three proceedings, in order to bring these proceedings into compliance with Pub. L. No. 100-202. The General Counsel expects to circulate these items to the Commission shortly. Commission counsel will notify the Court immediately after the Commission has taken action on the item relating to the instant case.

Respectfully submitted,

Roberta L. Cook,
Counsel.

Federal Communications Commission
Washington, D.C. 20554
(202) 632-6444

January 19, 1988

3 A copy of the Order is attached to this status report.

Before the
Federal Communications Commission
Washington, D. C. 20554

FCC 88-17
37262

In Re)
)
Reexamination of the)
Commission's Comparative)
Licensing, Distress Sales) MM Docket No. 86-484
and Tax Certificate Policies)
Premised on Racial, Ethnic)
or Gender Classifications)

Order

Adopted: January 14, 1988

;Released: January 14, 1988

By the Commission

1. On December 17, 1986, the Commission adopted a Notice of Inquiry (Notice)¹ in this proceeding to reexamine certain policies based on racial, ethnic or gender classifications. These policies are first, the application of racial, ethnic, and gender preferences in comparative licensing proceedings for broadcast stations; second, the administration of the Commission's distress sale policy to permit minority acquisition of broadcast stations designated for hearing on basic qualifications issues; and third, the issuance of tax certificates for sales of broadcast properties to minorities. The reexamination of these policies was prompted by questions raised by an order of the United States Court of Appeals of the District of Columbia Circuit in Steele v. FCC².

2. In the Notice, the Commission ordered the presiding administrative law judges, the Review Board, and the Office of the General Counsel to hold in abeyance all decisions in comparative licensing proceedings in which the award of a racial/gender preference was dispositive, pending resolution of this proceeding.³ The Commission further ordered the Mass Media Bureau to hold in

1 52 Fed. Reg. 596 (Jan. 7, 1987).

2 Case No. 84-1176 (D.C. Cir. motion for remand granted Oct. 9, 1986).

3 See also Order, MM Docket No. 86-484, 2 FCC Rcd 2377 (1987).

September 12, 1986.⁷

6. In further compliance with this law, we will rescind our orders in this proceeding (1) to hold in abeyance decisions in comparative licensing proceedings in which the award of a racial/gender preference is dispositive; and (2) to hold in abeyance all pending or future applications for preferential treatment under our distress sale policy. All cases held in abeyance pursuant to the Notice will be processed in accordance with Commission policies and standards in effect prior to September 12, 1986.

7. Accordingly, IT IS ORDERED that MM Docket No. 86-484 is hereby closed and terminated, and that the Commission staff shall cease all actions to repeal, retroactively apply changes in, or reexamine its comparative licensing, distress sale and tax certificate policies designed to expand minority and female broadcast station ownership.

8. IT IS FURTHER ORDERED that the Commission staff continue to implement its comparative licensing, distress sale, and tax certificate policies designed to further minority and female ownership of broadcast properties in effect prior to September 12, 1986.

9. IT IS FURTHER ORDERED that (1) the presiding administrative law judges, the Review Board, and the Office of the General Counsel process all comparative licensing cases in a manner consistent with Commission policy in effect prior to September 12, 1986; and (2) the Mass Media Bureau process all applications for distress sale authority pursuant to the minority ownership policy statement in a manner consistent with prior Commission policy.

10. Pursuant to Section 553 of the Administrative Procedure Act, the Commission finds for good cause that the Order adopted herein may be promulgated without prior public notice and comment thereon because the Commission's action is mandated by Pub. L. No. 100-202 (signed Dec. 22, 1987).

11. IT IS FURTHER ORDERED that this Order shall become effective upon adoption. Good cause exists for such action. See para. 10 supra.

7 As discussed in detail in the Notice, these policies have been articulated in a series of policy statements and Commission and court decisions. In addition to the sources cited in the appropriations legislation, minority preference policies were established in TV 9 Inc. v. FCC 435 F.2d 929 (D.C. Cir. 1973), cert. denied, 419 U.S. 986 (1974).

Winter Park Communications, et al.,)
Appellant,)
)
v.) No. 85-1755
)
Federal Communications Commission,)
Appellee.)
)
Rainbow Broadcasting Co., et al.,
Intervenors.

Sharon D. Freeman

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-1176

September Term, 19₈₇

James U. Steele,

Appellant

v.

Federal Communications Commission,

Appellee

Dale Bell,

Intervenor

88-1221

James U. Steele,

Appellant

v.

Federal Communications Commission,

Appellee

Dale Bell,

Intervenor

United States Court of Appeals
For the District of Columbia Circuit

FILED JUN 09 1988

CONSTANCE L. DUPRÉ
CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

- 2 -

No. 85-1755

September Term, 19₈₇

Winter Park Communications,

Appellant

v.

Federal Communications Commission,

Appellee

Rainbow Broadcasting Company, et al.,

Intervenors

And Consolidated Case No. 85-1756

O R D E R

Upon consideration of appellant's in No. 84-1176 motion for clarification and recall of mandate and appellant's motion to recall the record in Nos. 85-1755 et al., it is ORDERED by the Court as follows:

- 1) The mandate issued by the Court on October 9, 1986 in No. 84-1176 is hereby recalled and appellee is directed to return the mandate as promptly as possible.
- 2) Nos. 84-1176 and 88-1221 are hereby consolidated for all purposes.
- 3) The record in Nos. 85-1755 et al. is hereby recalled and appellee is directed to return the record as promptly as possible.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

- 3 -

No. 84-1176, et al.

September Term, 19₈₇

- 4) The Clerk shall set the above-captioned cases for argument on the same day before a randomly selected panel.

FOR THE COURT:
Constance L. Dupré
Clerk

By:



Robert A. Bonner
Deputy Clerk

APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION
PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT
(CAREFULLY READ INSTRUCTIONS ON BACK BEFORE COMPLETING)

For Commission Use Only

File No.

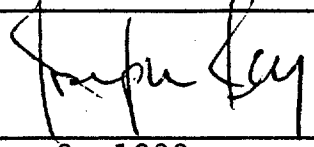
1. Legal Name of Applicant (See Instruction C) RAINBOW BROADCASTING COMPANY		3. PURPOSE OF APPLICATION: <input type="checkbox"/> a. Additional time to construct broadcast station <input checked="" type="checkbox"/> b. Construction permit to replace expired permit	
2. Mailing Address (Number, street, city, state, zip) 3DI Corp. 7110 N.W. Fiftieth Street Miami, Florida 33166 MAY 10 1989		4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT: File Number BPCT-820809KF Call Letters WRBW(TV) Frequency UHF Channel No. 65	
Telephone No. (Include Area Code) (305) 591-9416 FCC Office of the Secretary		Station Location Orlando, Florida	
OTHER: Submit as Exhibit No. <u>none</u> a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc.			
6. EXTENT OF CONSTRUCTION: (a) Has equipment been delivered? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If NO, answer the following: From Whom Ordered (If no order has been placed, so indicate) N/A Date Ordered		(b) Has installation commenced? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, submit as Exhibit No. _____ a description of the extent of installation and the date installation commenced. (c) Estimated date by which construction can be completed. within 24 months of completion of judicial review	
Date Delivery Promised			
7. (a) If application is for extension of construction permit, submit as Exhibit No. _____ reason(s) why construction has not been completed. (b) If application is to replace an expired construction permit, submit as Exhibit No. <u>1</u> the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).			
8. Are the representations contained in the application for construction permit still true and correct? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If NO, give particulars in Exhibit No. _____			

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Legal Name of Applicant Rainbow Broadcasting Company	Signature 
Title Partner	Date May 8, 1989